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Antonio J. Gracias, James Murdoch, Kimbal Musk,

And Linda Johnson Rice

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IN RE TESLA, INC. SECURITIES
LITIGATION

Case No. 3:18-cv-04865-EMC

**ADMINISTRATIVE MOTION TO FILE
UNDER SEAL EXHIBITS TO AND
PORTIONS OF DEFENDANTS' REPLY IN
SUPPORT OF MOTION TO TRANSFER
VENUE**

Date: January 13, 2023

Time: 9:00 AM

Location: Courtroom 5, 17th Floor

Judge: Hon. Edward Chen

1 **I. INTRODUCTION**

2 Pursuant to Northern District of California Civil Local Rules 7-11 and 79-5, Defendants
 3 Tesla, Inc., Elon Musk, Brad W. Buss, Robyn Denholm, Ira Ehrenpreis, Antonio J. Gracias, James
 4 Murdoch, Kimbal Musk, and Linda Johnson Rice (together, “Defendants”) bring this
 5 Administrative Motion to File Under Seal passages of their Memorandum in Support of
 6 Defendants’ Motion to Transfer Venue (the “Memorandum”) (filed concurrently herewithin), and
 7 the confidential exhibit used in support thereof. Pursuant to Civil Local Rule 79-5, this Motion is
 8 accompanied by a Proposed Order; Declaration of Michael T. Lifrak; and an unredacted version of
 9 the Memorandum.
 10

11 **II. ARGUMENT**

12 Civil Local Rule 79-5(c) requires that a party seeking to file its own documents under seal
 13 must file and serve an administrative motion which articulates the applicable legal standard and the
 14 reasons for keeping a document under seal, accompanied by a supporting declaration, and a
 15 proposed order that is narrowly tailored.

16 In the Ninth Circuit, the common law right of access to judicial proceedings “is not absolute
 17 and can be overridden given sufficiently compelling reasons for doing so.” *Foltz v. State Farm Mut.*
 18 *Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003). In making that determination, “courts should
 19 consider all relevant factors, including: the public interest in understanding the judicial process and
 20 whether disclosure of the material could result in improper use of the material for scandalous or
 21 libelous purposes or infringement upon trade secrets.” *Id.* (citing *Hagestad v. Tragesser*, 49 F.3d
 22 1430, 1434 (9th Cir. 1995)). In particular, “compelling reasons sufficient to outweigh the public’s
 23 interest in disclosure and justify sealing court records exist when such court files might have become
 24 a vehicle for improper purposes, such as the use of records to gratify private spite, promote public
 25 scandal, circulate libelous statements, or release trade secrets.” *Kamakana v. City & County of*
 26 *Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006) (internal quotations omitted).

27 Defendants seek to seal the full responses provided by potential jurors to the jury
 28 questionnaire, including identifying personal information. Additionally, Defendants have redacted

only direct quotes taken from juror questionnaire responses in the Memorandum. Courts have recognized that juror questionnaire responses are sensitive and should be sealed prior to juror selection. *See e.g., United States v. Holmes*, 572 F.Supp. 3d 831, 838 (N.D. Cal. 2021) (recognizing that jury “the compelling interests of [the] right to a fair and impartial trial and the jurors’ privacy” justifies sealing juror questionnaires); *United States v. Bonds*, No. C 07-00732 SI, 2011 U.S. Dist. LEXIS 155885, at *15-20 (maintaining juror questionnaire responses under seal prior to voir dire and identifying juror information under seal prior to verdict in “high profile” case).

Accordingly, Defendants request that the Court seal select portions of Defendants’ Memorandum and exhibit filed in support thereof, as identified in the table below, because they contain protectable personal information on potential jurors.

Document	Portions to be Filed Under Seal	Designee
Defendants’ Memorandum	Excerpts	Defendants
Exhibit A	Entirety	Defendants

Public disclosure of this confidential and sensitive information will cause harm to potential jurors by revealing their identifying and personal information. The risk of harm is heightened because of the media attention surrounding these proceedings. Defendants have narrowly tailored their request to only information meriting sealing.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court grant this Administrative Motion to Seal.

DATED: January 12, 2023

Respectfully submitted,

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By: /s/ Alex Spiro

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